

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL SIMON,

Defendant.

No. CR 04-1006

**FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NUMBER \_\_\_\_\_**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NUMBER \_\_\_\_\_**

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

**INSTRUCTION NUMBER \_\_\_\_\_**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

**INSTRUCTION NUMBER \_\_\_\_\_**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers and by Carl Simon are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you will be given an instruction that some evidence was received for a limited purpose only. You must follow that instruction.

**INSTRUCTION NUMBER \_\_\_\_\_**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence – the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NUMBER \_\_\_\_\_**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motive the witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**INSTRUCTION NUMBER \_\_\_\_**

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by a showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.



**INSTRUCTION NUMBER \_\_\_\_**

You have heard testimony that the defendant made statements to government officials. It is for you to decide: (1) whether the defendant made the statements; and (2) if so, how much weight you should give to them.

In making these decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

**INSTRUCTION NUMBER \_\_\_\_**

In this case, the defendant did not testify. No inference of guilt can be drawn from this. The defendant is not required to testify. The burden of proof remains upon the government to prove the guilt of the defendant.

**INSTRUCTION NUMBER \_\_\_\_**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much as weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**INSTRUCTION NUMBER \_\_\_\_\_**

You have heard a certain category of evidence called “similar acts” evidence. Here, you have heard evidence that the defendant discharged pollutants at times other than those charged in the Indictment. You may not use this “similar acts” evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider “similar acts” evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make that finding, then you may consider the “similar acts” evidence to decide knowledge, intent, and motive. “Similar acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you shall disregard such evidence.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of “similar acts” only on the issue of defendant’s knowledge, intent and motive.

**INSTRUCTION NUMBER \_\_\_\_**

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

**INSTRUCTION NUMBER \_\_\_\_\_**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NUMBER \_\_\_\_**

The Indictment in this case charges the defendant with four separate crimes.

Under Count 1, the Indictment charges that on or about May 13, 2003, the defendant did knowingly discharge and cause to be discharged, a pollutant, that is milk waste, from a point source into Hogan's Branch, a water of the United States, and did so with the knowledge that the discharge would enter Hogan's Branch, and that said discharge was done without a National Pollutant Discharge Elimination System permit.

Under Count 2, the Indictment charges that on or about June 5, 2003, through about June 10, 2003, the defendant did knowingly discharge and cause to be discharged, a pollutant, that is manure and milk waste, from a point source into Hogan's Branch, a water of the United States, and did so with the knowledge that the discharge would enter Hogan's Branch, and that said discharge was done without a National Pollutant Discharge Elimination System permit.

Under Count 3, the Indictment charges that on or about August 5, 2003, through about August 12, 2003, the defendant did knowingly discharge and cause to be discharged, a pollutant, that is milk waste, from a point source into Hogan's Branch, a water of the United States, and did so with the knowledge that the discharge would enter Hogan's Branch, and that said discharge was done without a National Pollutant Discharge Elimination System permit.

Under Count 4, the Indictment charges that between about November 22, 2003, and December 29, 2003, the defendant did knowingly discharge and cause to be discharged, a pollutant, that is manure, milk waste, and other agricultural waste, from a lagoon located

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**INSTRUCTION NUMBER \_\_\_\_ (Cont'd)**

on the Simon Dairy Facility through a man-made ditch and into Hogan's Branch, a water of the United States, and did so with the knowledge that the discharge would enter Hogan's Branch, and that said discharge was done without a National Pollutant Discharge Elimination System permit.

The defendant has pled not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent.



**INSTRUCTION NUMBER \_\_\_\_**

The defendant is charged with violations of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act.

Anyone who discharges a pollutant from a point source into waters of the United States must have a permit issued by the United States Environmental Protection Agency, also known as the EPA, or by an authorized state. Permits issued pursuant to the Clean Water Act specify controls and limits on pollutants discharged from point sources in order to protect the integrity of the waters of the United States. Failure to obtain a permit for discharges of pollutants from a point source into waters of the United States is a violation of the Clean Water Act.

**INSTRUCTION NUMBER \_\_\_\_**

The crime of discharging a pollutant into a water of the United States without a permit, as charged in Counts 1 through 4 of the Indictment, has five essential elements, which are:

- One,* on or about the date charged in the Indictment [Count 1 – May 13, 2003; Count 2 – June 5, 2003, through June 10, 2003; Count 3 – August 5, 2003, through August 12, 2003; Count 4 – November 22, 2003, through December 29, 2003], the defendant discharged or caused to be discharged a pollutant, that is manure, milk, or other agricultural waste;
- Two,* the pollutant was discharged from a point source, that is a concentrated animal feeding operation, pipe, ditch, or rolling stock;
- Three,* the pollutant was discharged into a water of the United States, that is Hogan’s Branch;
- Four,* the discharge was without or in violation of a National Pollution Discharge Elimination System permit; and
- Five,* the defendant acted knowingly.

If all of the essential elements have been proved beyond a reasonable doubt as to the defendant for the Count under consideration by you, then you must find the defendant guilty of the Count under consideration by you; otherwise you must find the defendant not guilty of the Count under consideration by you.

**INSTRUCTION NUMBER\_\_\_\_\_**

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

In order to prove the defendant acted knowingly, the United States must prove five essential elements, which are:

- One*, the defendant committed the discharge deliberately and not as a result of ignorance, mistake, or accident;
- Two*, the defendant knew the identity or at least the general character and nature of the material discharged, not mistaking it for a different, unprohibited material;
- Three*, the defendant knew the material discharged was from his facility;
- Four*, the defendant knew that the material discharged into Hogan’s Creek; and
- Five*, the defendant knew he did not have a permit that allowed the discharge.

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. In other words, the government is not required to prove that:

- One*, the defendant knew the material he discharged fell within the definition of “pollutant”;
- Two*, the defendant knew his facility fell within the definition of a “point source”;
- Three*, the defendant knew that Hogan’s Creek fell within the definition of “water of the United States”; or
- Four*, the defendant knew that permits were available or required.

**INSTRUCTION NUMBER \_\_\_\_**

The term “pollutant” means dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste (including manure and milk waste) discharged into water.

**INSTRUCTION NUMBER \_\_\_\_**

The term “discharge of a pollutant” means any addition of any pollutant to navigable waters from any point source.

**INSTRUCTION NUMBER \_\_\_\_\_**

The term “point source” means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

A “point source” does not include agricultural stormwater discharges and return flows from irrigated agriculture.

## INSTRUCTION NUMBER \_\_\_\_\_

To be considered a “concentrated animal feeding operation,” the defendant’s operations must first meet the definition of an animal feeding operation.

An “animal feeding operation” is a lot or facility meeting two requirements:

*One*, animals have been, are, or will be stabled or confined at the lot or facility and fed or maintained at such lot or facility for a total of 45 days or more in any 12-month period; and

*Two*, crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

If a facility meets the definition of an animal feeding operation, that facility is defined as a concentrated animal feeding operation if it meets the requirements for being either a “Large concentrated animal feeding operation” or a “Medium concentrated animal feeding operation.”

A “Large concentrated animal feeding operation” is an animal feeding operation that stables or confines at least 700 mature dairy cows.

A “Medium concentrated animal feeding operation” is an animal feeding operation that meets two requirements:

*One*, the animal feeding operation stables or confines 200 to 699 mature dairy cows; and

*Two*, either pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**INSTRUCTION NUMBER \_\_\_\_\_**

The term “navigable waters” means “waters of the United States.”

The term “waters of the United States” includes all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all other waters, such as interstate lakes, rivers, streams (including intermittent streams and arroyos), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce. This term also includes tributaries of any of the waters mentioned above.

The government is not required to prove that a discharge actually moved downstream or reached a navigable body of water.



**INSTRUCTION NUMBER \_\_\_\_\_**

The government is not required to prove that the discharge of pollutants caused any damage or harm in order to establish the offense charged under the Clean Water Act.

**INSTRUCTION NUMBER \_\_\_\_\_**

In order to sustain its burden of proof, it is not necessary for the government to prove that the defendant personally did every act constituting the offenses charged. As a general rule, whatever any person is legally capable of doing himself, he can do through another as his agent. So, if the acts or conduct of another is deliberately ordered or directed by the defendant or deliberately authorized or consented to by the defendant, then the law holds the defendant responsible for such acts or conduct just the same as if personally done by him.

**INSTRUCTION NUMBER \_\_\_\_\_**

You will note the Indictment charges that the offenses were committed “on or about” and “between about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged by the Indictment.

**INSTRUCTION NUMBER \_\_\_\_\_**

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NUMBER \_\_\_\_\_**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

**INSTRUCTION NUMBER \_\_\_\_\_**

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

**(CONTINUED)**

**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

*Finally*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

**INSTRUCTION NUMBER \_\_\_\_\_**

Attached to these instructions you will find four Verdict Forms. The Verdict Forms are simply the written notice of the decision that you reach in this case. The answers to the questions on the Verdict Forms and your verdicts must be the unanimous decision of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each question and to each verdict, your foreperson will fill out the Forms, sign and date them, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

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**DATE**

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**LINDA R. READE  
JUDGE, U. S. DISTRICT COURT**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL SIMON,

Defendant.

No. CR 04-1006

**VERDICT FORM - COUNT 1**

\_\_\_\_\_  
We, the jury, find the defendant, Carl Simon, \_\_\_\_\_ of the crime of  
Guilty/Not Guilty  
knowingly discharging or causing to be discharged a pollutant from a point source into a  
water of the United States without a permit on or about May 13, 2003, as charged in  
Count 1 of the Indictment.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL SIMON,

Defendant.

No. CR 04-1006

**VERDICT FORM - COUNT 2**

We, the jury, find the defendant, Carl Simon, \_\_\_\_\_ of the crime of  
knowingly discharging or causing to be discharged a pollutant from a point source into a  
water of the United States without a permit on or about June 5, 2003, through about  
June 10, 2003, as charged in Count 2 of the Indictment.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL SIMON,

Defendant.

No. CR 04-1006

**VERDICT FORM - COUNT 3**

We, the jury, find the defendant, Carl Simon, \_\_\_\_\_ of the crime of  
knowingly discharging or causing to be discharged a pollutant from a point source into a  
water of the United States without a permit on or about August 5, 2003, through about  
August 12, 2003, as charged in Count 3 of the Indictment.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL SIMON,

Defendant.

No. CR 04-1006

**VERDICT FORM - COUNT 4**

We, the jury, find the defendant, Carl Simon, \_\_\_\_\_ of the crime of  
Guilty/Not Guilty  
knowingly discharging or causing to be discharged a pollutant from a lagoon located on the  
Simon Dairy Facility through a man-made ditch into a water of the United States without  
a permit between November 22, 2003, and December 29, 2003, as charged in Count 4 of  
the Indictment.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE